PUBLIC PROSECUTOR v. VOON NYUK TZE & ANOR.

[A.Cr.J. (Harley J.) March 2, 1965]

[Kuching — Criminal Appeal No. K. 4 of 1965]

Internal Security Act, 1960, ss. 27, 41 and 43 — Posting document likely to lead to breach of peace — Subversive document — Necessity to prove likelihood of breach of peace.

Interpretation — Construction of statute — Ejusdem generis rule.

The accused were acquitted of a charge of doing an act preparatory to the posting of a document likely to lead to a breach of the peace under sections 27 and 43 of the Internal Security Act 1960. The learned magistrate considered the document to be subversive but nevertheless held that there was no evidence to show that it was likely to lead to a breach of the peace. The Public Prosecutor appealed.

Held: a document may be subversive even though not likely to cause a breach of the peace and as there was no evidence to show that the conduct of the accused would have provoked a breach of the peace on the day in question, the appeal must be dismissed.

Cases referred to:—

(1) *Bryan* v. *Robinson* [1960] 1 W.L.R. 506.

(2) *Attorney-General* v. *Brown* [1920] 1 K.B. 773, 797.

CRIMINAL APPEAL.

D. M. Goodbody (Deputy Public Prosecutor) for the appellant.

Chin Yung Yet for the respondents.

Harley J.: The petition of the Public Prosecutor was as follows:

"THE PETITION OF THE PUBLIC PROSECUTOR Sheweth:

1. That Voon Nyuk Tze and Phoong Kim Jiaw were on 20th day of January, 1965 charged before the District Court at Kuching with the following offence:—

> 'That you, on 15.11.64 at 2315 hours at 13th Mile Stone, Serian Simanggang Road, did an act preparatory to posting a document likely to lead to a breach of the peace and thereby committed an offence under section 27 of the Internal Security Act, 1960 read with section 43 of the Act and punishable under section 41 of the said Act.'.

2. That on 20th day of January, 1965 the learned district court magistrate ruled that there was no case to answer against either accused on the ground that the document which the two accused were alleged to be in the process of posting was not likely to lead to a breach of the peace and therefore acquitted both accused.

3. Your petitioner is dissatisfied with the said ruling on the ground that:

(1) The learned magistrate was wrong in law in ruling that no offence under section 27 of the Internal Security Act 1960 had been committed.

(2) Notwithstanding the fact that the learned magistrate was of the opinion that the document was subversive and "written in a hostile spirit to the Malaysian Government" he failed to give any or sufficient weight to the fact that publication of anti-Malaysian propaganda causes resentment and anger among the Malay population in Sarawak.

(3) The learned magistrate failed to take judicial notice of the fact that in previous cases in Kuching and one in the court of the learned magistrate it was admitted that violence had broken out when persons carrying posters had attempted to fix them to buildings and walls.

4. Your petitioner prays:

(1) That the said ruling be quashed and the court directed to call on both accused to make their defence to the charge set out in paragraph 1 hereof.

(2) That such other order be made as may be just.

Dated at Kuching this 8th day of February, 1965.

(Sgd.) D. M. Goodbody,
DEPUTY PUBLIC PROSECUTOR."

My first comment is in relation to paragraph 3(3) of the above petition: if a magistrate is to take notice of previous cases, such cases should be referred to him specifically. The court is entitled to take judicial notice of the political situation, and the petition lays stress on the argument "that publication of anti-Malaysian propaganda causes resentment and anger among the Malay population in Sarawak". It might with equal truth be said that publication of pro-Malaysian propaganda causes resentment and anger among certain sections of the Chinese population.

The document, or shred of document, complained about was written in small Chinese script. It seems as though one of the two men accused in the case stood on the shoulders of the other and tried to affix this document to a telegraph pole. That document would then presumably, when so affixed, be unreadable except with difficulty. Being in Chinese, moreover, it could scarcely have any immediate effect on the "Malay population." The evidence given by a police inspector in court was that:— "There were no other people on the road except the two accused. There were no other cyclists. After Mr. Guillan's car — a police truck turned up; in that truck we took the two accused to Central Police Station Kuching. Everything was very quiet at that time".

The learned magistrate, in accordance with section 163 of the Criminal Procedure Code, recorded an order of acquittal as follows:—

> "In this case the accused are charged with doing an Act preparatory to posting a document likely to lead to a breach of the peace. Having heard the evidence so far adduced, I am satisfied that so far as the general facts are concerned there is clearly a case for the accused to answer.
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> What is not so clear in my view is the question whether or not the document is of a nature *likely to lead to any breach of the peace.* Under section 29(3) on the matter of possession of subversive documents the key words used are, 'any document having in part or in whole a *tendency*' — to (here the section sets out the various circumstances which constitute subversion).
>
> The key words used in section 27 with which the accused are charged are *'likely to lead to any breach of the peace'* not merely a document which has a 'tendency' to lead to any breach of the peace.
>
> The translation of the document when read as a

whole would I think be caught under the very wide definition of subversion given at section 29 of the Act, but in my view it does not necessarily follow that because the contents of a document comes within the definition of subversion it must be such as to be likely to lead to a breach of the peace. The court must consider whether the document was of such a nature as to render it probable that its contents would lead to a breach of the peace.

To decide whether this is so a court must examine carefully the document, and I think have regard to all the surrounding circumstances, including its position, prominent or otherwise, the size of the writing and any other relevant matter.

This document is clearly written in a hostile spirit to the Malaysian and British Governments, but I would not venture to say that its language is inflammatory, or provocative to the public at large. In fact on the face of it it is anti-Malaysian propaganda. It could not I think be said to be of a nature which would be likely to cause a firing of passion as would propaganda advocating colour or racial segregation obviously do.

In my view having very carefully and anxiously considered this document and its contents I do not find that it is of a nature which is likely to lead to a breach of the peace. In my view it would have been open to the police to charge the 2nd accused with possession of a subversive document. In all the circumstances I find then, that the document is not caught by the provisions of section 27 Internal Security Act, and in the result hold that the accused have no case to answer on this charge. I order that the accused be acquitted and discharged."

The argument of the Public Prosecutor in the present appeal is to this effect: "The learned magistrate considered the document to be 'subversive', and publication of a subversive document is clearly likely to lead to a breach of the peace." A document, however, by definition (section 29(3) of the Internal Security Act 1960) might be "subversive" even though not *likely* to cause a breach of the peace. It will be subversive if it has "a *tendency* .. to propagate .. any act prejudicial to the security of the Federation." The emphasis, as the learned magistrate properly recognised, is on the word "tendency". A document may well "tend" towards an act without being "likely" to cause it. Therefore the learned magistrate was perfectly correct to discriminate between sections 27 and 29 of the Act. In any event, it is not germane to the present issue to decide whether or not the document in the instant case was "subversive" in terms of section 29.

There are three further observations which this court desires to add:

(1) The finding that an act is or is not likely to cause a breach of the peace is fundamentally a question of fact, and the finding of fact may not lightly be disturbed on appeal. No act on the part of any person was proved to show that it was reasonably probable that the conduct of the accused would on the day in question have provoked a breach of the peace. As for "What is a Breach of the Peace" see the paragraph under that heading in 1954 *Criminal Law Review* p. 578. It may be relevant to note that conduct proved to cause annoyance to the public is not necessarily conduct which is likely to occasion a breach of the peace (*Bryan* v. *Robinson* [1]).

(2) The question whether a document is "likely to cause a breach of the peace" must be considered within the context of section 27 read as a whole. The section reads as follows:—

"Any person who posts or distributes any placard, circular or other document containing any incitement to violence, or counselling disobedience to the law or to any lawful order, or likely to lead to any breach of the peace, shall be guilty of an offence against this part."

I have no doubt that the learned magistrate is well acquainted with the "*ejusdem generis*" rule. "By this it is meant that general words coming after particular words are restricted to and controlled by the meaning of the particular words. The simplest statement of this doctrine is to be found in a judgment of Lord Campbell C.J. in *Reg.* v. *Edmundson* (1859) 28 L.J. (M.C.) 213, where he says: 'I accede to the principle laid down in all the cases which have been cited, that, where there are general words following particular and specific words, the general words must be confined to things of the same kind as those specified'." (*Attorney-General* v. *Brown* [2]).

If it had been desired absolutely to prohibit publication of all documents "likely to lead to any breach of the peace", it would have been redundant to specify "incitements to violence etc." The particular documents specified in the first two-thirds of section 27 have a restricting influence on the generic words which follow. The authorities on the *ejusdem generis* doctrine are collected in *Maxwell* on Interpretation of Statutes, under the heading: "Generic words following more Specific".

(3) Finally it must be remembered that section 27 is a penal section and should be construed strictly.

For the foregoing reasons I am satisfied that the learned magistrate's recording of an order of acquittal cannot be disturbed. Therefore this appeal against acquittal is dismissed.

Appeal dismissed.

ABDUL KAREEM v. RAWTHER

[O.C.J. (Ong J.) March 12, 1965]

[K.L. — Civil Suit No. 520 of 1960]

Malicious Prosecution — Malicious allegation of serious criminal offence — Arrest and detention by police — Subsequent acquittal and discharge — Defendant electing not to appear — Damages.

Practice and Procedure — R.S.C. 1957 O. 7 rr. 2 & 3 and O. 36 r. 31.

The plaintiff was arrested and prosecuted on a charge under section 199 of the Penal Code, but was subsequently discharged without his defence being called. He alleged that he was arrested at the instance of, and prosecuted on the strength of information supplied by,